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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of BRADLEY G. and REBEKAH S. WEISKITTEL.	
BRADLEY G. WEISKITTEL, Appellant, v. REBEKAH S. WEISKITTEL, Respondent.	G055204 (Super. Ct. No. 11D002010) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Masson & Fatini, Richard E. Masson and Susan M. Masson for Appellant.

Rebekah S. Weiskittel, in pro. per., for Respondent.

* * *

Bradley G. Weiskittel (Bradley) appeals from a postjudgment order requiring him to continue paying spousal support to Rebekah S. Weiskittel (Rebekah) for an additional five years.[1] He contends the court's "extension of jurisdiction over spousal support was an abuse of discretion" because the court incorrectly found the marriage was of long duration. He claims this finding conflicted with the parties' stipulated judgment, which did not define the marriage as long term. Alternatively, he claims there was insufficient evidence to find the marriage was of long duration and the court abused its discretion by not reducing or terminating spousal support. Finally, he contests the court's award of attorney fees to Rebekah. As explained below, we disagree with Bradley's contentions and, accordingly, we affirm the order.

FACTS

Bradley and Rebekah married in April 2001 and separated in February 2011. They have three children. In March 2011, Bradley filed a petition for dissolution of marriage.

In October 2012, the court started a trial which resulted in the issuance of a minute order granting dissolution of marriage, but (strangely) reserving jurisdiction as to the date of the dissolution. Among other things, the court continued the trial, but the minute order noted "[t]he [c]ourt finds this is a long term marriage of 9 years and 10 months as this was an intact family prior to marriage." The court ordered Bradley to pay $800 per month in spousal support to Rebekah "commencing 11/1/12 and continuing

[1] We refer to the parties by their first names for ease of reading and to avoid confusion, and not out of disrespect.

until the death of either party, the remarriage of [Rebekah], or further order of the court, whichever occurs first."[2]

In October 2013, the court issued a judgment for dissolution of marriage, which incorporated the parties' stipulated judgment (the Stipulated Judgment). With respect to spousal support, the Stipulated Judgment made certain findings regarding the marital standard of living, Bradley's ability to pay, Rebekah's need for support, the parties' health, the length of marriage, and the absence of domestic violence. The Stipulated Judgment stated Bradley's monthly income was approximately $9,873 while Rebekah's monthly income was approximately $1,600, but neither party was able to sustain the marital standard of living. In defining the length of marriage, the Stipulated Judgment provided: "This is a marriage of nine (9) years and ten (10) months as this was an intact family prior to marriage." However, the Stipulated Judgment was silent as to whether or not the marriage was classified as long term. The Stipulated Judgment also required Rebekah to "use her best efforts and make a good faith effort to become self-supporting within a reasonable time" pursuant to *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705. Based on these findings, the Stipulated Judgment required Bradley to pay $1,057 per month in spousal support to Rebekah with no termination date specified. The spousal support provision stated the payments would "continu[e] until the death of either party, the remarriage, agreement in writing between the parties, or further order of the [c]ourt."

In January 2017, Bradley filed a request for an order (RFO) terminating or modifying spousal support. Bradley argued there was a material change of circumstances since the Stipulated Judgment because: (1) Rebekah's monthly income increased from $1,600 to $3,200; and (2) Rebekah was cohabiting with her boyfriend who contributed to her expenses. He also argued the Stipulated Judgment found the marriage to be short

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[2] Prior to the October 2012 minute order, Bradley had been paying spousal support to Rebekah since May 2011.

term and that he had been paying spousal support for more than half the length of the marriage.

Rebekah filed a responsive declaration to the RFO in February 2017. She requested an increase in spousal support because: (1) she was no longer receiving child support for their eldest child since he turned 18 years old; and (2) Bradley's monthly income increased by an additional $2,000 per month. She also argued the Stipulated Judgment made no finding that the marriage was short term. Instead, she argued the court found the marriage was long term in the October 2012 minute order and that she did not notice this omission from the Stipulated Judgment because she was not represented by counsel. Finally, she requested Bradley contribute to her attorney fees.

At the hearing on the RFO, Bradley's counsel argued the issue of whether the marriage was long term was "precluded under the doctrine of res judicata as well as collateral estoppel on the grounds that there ha[d] already been a [Stipulated] [J]udgment on the term of the marriage." The court found "it apt to determine this is a long-term marriage." The court disagreed that pre-marriage cohabitation determined the length of marriage but noted it had "the ability to set the length of time support will run if the marriage is less than 10 years." The court also explained it had "the ability to treat a marriage that is less than 10 years as a marriage of long duration." Finally, the court noted "the parties had children together prior to marriage, and decided [Rebekah] would be a stay at home mom."

The court also pointed to Rebekah's declaration, which stated her boyfriend "is living with her and contributes to her expenses." The court then found "there [was] a reduced need for support to a certain extent" and considered the factors set forth in Family Code section 4320.[3] Among other things, the court found Bradley's monthly income was $11,836 while Rebekah's monthly income was $4,100. According to the

[3] All statutory references are to the Family Code.

court, Bradley's earning capacity was "sufficient to maintain the marital standard of living" while Rebekah's earning capacity was not. The court also found Rebekah had "expanded her marketable skills, and [would] be able to increase her earnings going forward." The court accordingly ordered Bradley to pay spousal support for five more years when "the amount of support shall be reduced to zero . . . absent a significant change in circumstance." Finally, the court ordered Bradley to pay $2,500 toward Rebekah's attorney fees.

DISCUSSION

The Court Did Not Abuse Its Discretion by Continuing Spousal Support for Five Years

Bradley contends the court abused its discretion by "re-defin[ing] the [p]arties' marriage as a marriage of 'long duration'" because the Stipulated Judgment intentionally did not define the marriage as long term. Relying on principles of res judicata and collateral estoppel, he claims the court erred by adopting a finding in conflict with the Stipulated Judgment. He therefore argues the court's "resulting extension of jurisdiction over spousal support was an abuse of discretion." Assuming the court's finding did not conflict with the Stipulated Judgment, he contends there was insufficient evidence to find the marriage was of long duration. In the alternative, he claims the court abused its discretion by not reducing or terminating spousal support. Rebekah argues the court did not abuse its discretion because the Stipulated Judgment did not define the marriage as short term or set a termination date for spousal support. She also claims the court's finding is consistent with the October 2012 minute order, which found the marriage was of long duration. Regardless of whether the court erred in characterizing the marriage as long term, we conclude the court had discretion to continue support payments.

Applicable Legal Principles Governing Modifications of Spousal Support

An agreement for spousal support is "subject to subsequent modification or termination by court order." (§ 3591, subd. (a).) "Modification of spousal support, even if the prior amount is established by agreement, requires a material change of circumstances since the last order. [Citations.] Change of circumstances means a reduction or increase in the supporting spouse's ability to pay and/or an increase or decrease in the supported spouse's needs. [Citations.] It includes all factors affecting need and the ability to pay." (*In re Marriage of McCann* (1996) 41 Cal.App.4th 978, 982.) To terminate a support order containing no express termination date, the supporting spouse must establish "a change in circumstances which justifies termination." (*In re Marriage of Heistermann* (1991) 234 Cal.App.3d 1195, 1201.)

In determining whether there are changed circumstances when there is a stipulated spousal support award, the trial court "is bound to give effect to the intent and reasonable expectations of the parties as expressed in the agreement." (*In re Marriage of Aninger* (1990) 220 Cal.App.3d 230, 238, superseded by statute on another point as indicated in *In re Marriage of O'Connor* (1997) 59 Cal.App.4th 877, 882-883.) Stated another way, "the trial court's discretion to modify the spousal support order is constrained by the terms of the marital settlement agreement. The court may not simply reevaluate the spousal support award." (*Aninger,* at p. 238.)

"'A trial court considering whether to modify a spousal support order considers the same criteria set forth in . . . section 4320 as it considered in making the initial order.'" (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 396.) Section 4320 identifies more than a dozen factors including: (1) each spouse's ability to maintain the marital standard of living; (2) contributions to the supporting spouse's education, training, career, or license; (3) the supporting spouse's ability to pay support; (4) the needs of each spouse based on the marital standard of living; (5) the obligations and assets of each spouse; (6) the duration of the marriage; (7) the supported spouse's ability

to engage in gainful employment without unduly interfering with the interests of dependent children; (8) the age and health of the spouses; (9) documented evidence of any history of domestic violence; (10) tax consequences; (11) the balance of hardships; (12) an abusive spouse's criminal convictions; and (13) any other factors the court deems just and equitable. (§ 4320, subds. (a)-(n).) The trial court also considers the "goal that the supported [spouse] shall be self-supporting within a reasonable period of time," which the statute defines as generally "one-half the length of the marriage," except in the case of a marriage of long duration. (§ 4320, subd. (l).) However, "nothing . . . is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the factors listed in [section 4320], [s]ection 4336, and the circumstances of the parties." (*Ibid.*) In balancing the statutory factors, it is up to the trial court "to determine the appropriate weight to accord to each" factor. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.)

Standard of Review

On appeal, we review the modification decision for an abuse of discretion. (*In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 957.) "We presume the court's decision is correct and the appealing party must affirmatively show error." (*Ibid.*) Assuming the court considered and weighed the section 4320 factors, "the ultimate decision as to amount and duration of spousal support rests within its broad discretion . . . . [Citation.] 'Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.'" (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.) "An abuse of discretion is shown only when, '" . . . after calm and careful reflection upon the entire matter, it can fairly be said that no judge would reasonably make the same order under the same circumstances."'" (*In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572, 575.)

Material Change of Circumstances

Bradley contends: "That a specific spousal support order may be modifiable upon a proper showing of material change of circumstances does not prevent it from being *res judicata* as to the circumstances that existed at the time it was made." He accordingly argues the court "improperly and in violation of the precepts of *res judicata*, re-evaluated the circumstances underlying the term of the marriage to make a finding inapposite to that included in the Stipulated Judgment." We disagree.

Here, the court did not re-evaluate circumstances existing at the time of the Stipulated Judgment. Instead, there was sufficient evidence of a material change in circumstances since the Stipulated Judgment, which warranted termination of spousal support payments after an additional five years. Rebekah's monthly income of $1,600 set forth in the Stipulated Judgment had increased to $4,100. Rebekah also was living with her boyfriend who contributed to her expenses. Thus, regardless of whether the court erred in finding the marriage was of long duration, the court based its spousal support award on the statutory factors and not just the length of the marriage. Based on all of the factors, the court reasonably could have found a material change of circumstances and determined "the amount of support shall be reduced to zero in five years, absent a significant change in circumstance."

The court also did not disregard the intent and reasonable expectations of the parties by continuing spousal support payments for five years. First, the Stipulated Judgment did not indicate a termination date for spousal support. Instead, it provided for spousal support payments "continuing until the death of either party, the remarriage, agreement in writing between the parties, or further order of the [c]ourt." Second, even if the Stipulated Judgment could be interpreted as finding the marriage was not long term, the court correctly noted it had "the ability to set the length of time support will run if the marriage is less than 10 years." (See § 4320, subd. (l) ["nothing in this section is intended to limit the court's discretion to order support for a greater . . . length of time,

based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties"].) Third, the Stipulated Judgment indicated "the spousal support order would be higher" if Bradley had the ability to pay. Bradley's monthly income of $9,873 set forth in the Stipulated Judgment had increased to $11,836. Given this increase, Bradley was able "to maintain the marital standard of living" while Rebekah was not. Thus, we find the court did not disregard the parties' intent and reasonable expectations as stated in the Stipulated Judgment.

Bradley also claims the court abused its discretion because it "extend[ed] spousal support for a term in excess of the length of the Parties' marriage" by approximately one year. As explained above, trial courts have discretion to set the duration of spousal support. (See *In re Marriage of Heistermann*, *supra*, 234 Cal.App.3d at p. 1202 [finding the trial court erred in terminating spousal support where parties were married for almost nine years and supporting spouse did not satisfy his burden of proving changed circumstances justifying termination]; *In re Marriage of Baker* (1992) 3 Cal.App.4th 491, 499-500 [finding trial court did not abuse its discretion in ordering spousal support for an indeterminate length of time even though the parties were married for less than 10 years]; *In re Marriage of Bukaty* (1986) 180 Cal.App.3d 143, 148 ["[A] trial judge need not, on the basis of duration alone, automatically terminate jurisdiction after a relatively short marriage."].) While section 4320, subdivision (l) suggests courts typically award spousal support for half the length of the marriage where the marriage is less than 10 years, "'[t]he code provides a guideline, not a hard and fast rule that support should be paid for half the length of the marriage.'" (*In re Marriage of Left* (2012) 208 Cal.App.4th 1137, 1150; see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 6:926.3, p. 6-494 ["one-half the length of the marriage operates as nothing more than a *baseline* measurement"].) We therefore reject Bradley's argument that the court erred in extending spousal support.

The Court Did Not Abuse Its Discretion by Awarding Attorney Fees to Rebekah

Bradley next contests the court's award of attorney fees. He claims the award of $2,500 to Rebekah was "unreasonable" given "the substantial evidence of Bradley's income, and continued payments of spousal and child support in an amount of $2,421, from his $11,836 monthly income."

Section 2030 permits a court to award attorney fees in marital dissolution proceedings. "The court may make an award of attorney's fees and costs under [s]ection 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a).) "In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in [s]ection 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances." (§ 2032, subd. (b).)

"'[A] motion for attorney fees and costs in a dissolution proceeding is left to the sound discretion of the trial court. [Citations.] In the absence of a clear showing of abuse, its determination will not be disturbed on appeal.' [Citation.] Thus, we affirm the court's order unless '"no judge could reasonably make the order made."'" (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 630.)

We see no grounds for reversal. Bradley essentially is advocating for this court to reweigh the evidence and reach a result more favorable to his interests. That is not the role of appellate courts. Bradley points to no legal error committed by the court

and instead insists the court came to the wrong discretionary conclusion. The court did not abuse its discretion by awarding attorney fees to Rebekah.

DISPOSITION

The order is affirmed. Rebekah is entitled to her costs on appeal.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.